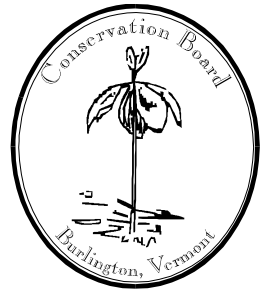


Burlington Conservation Board

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Stephanie Young



Conservation Board Meeting Minutes

Monday, December 7, 2015 – 5:30 pm
Planning and Zoning Conference Room - City Hall Lower Level
149 Church Street

Attendance

- **Board Members:** Zoe Richards (ZR), Jeff Severson (JS), Don Meals (DM), Scott Mapes (SM), Matt Moore (MM), Damon Lane (DL), Will Flender (WF), Miles Waite (MW)
- **Absent:** Stephanie Young (SY)
- **Public:** Andy Simon, Charles Simpson, Mary Twitchell, Ruby Perry, Martha Molpis, Bob Heiser (Burlington College lands), Erik Hoekstra, Justin Dextrateur, Dan Goltzman, Martha Lang (85 North Avenue & 453-501 Pine Street), Frank von Turkovich (South Forty Solar)
- **Staff:** Scott Gustin (Planning & Zoning), Dan Cahill, Jesse Bridges (Parks & Recreation), Kim Sturtevant, Esq. (City Attorney's Office)

MM, Chair, called the meeting to order at 5:30 p.m.

Minutes of November 2, 2015

A MOTION was made by DM and SECONDED by ZR:

Approve as written.

Vote: 6-0-2

Board Comment

SG got board tally for 12/15/15 joint meeting with PC, DRB, and DAB.

Public Comment

Andy Simon, spoke to BCB bylaws and conflicts of interest. He said there are members of the board that he perceives to have a conflict of interest, not just voting but in participating in discussion as well.

MW recused as did JS. MW suggested that WF lead the discussion. MM said he's participated in discussions at the board level. He's thought about whether it would be appropriate to continue – he's on the board, and lives and works in the community. A development project and a conservation effort have both clearly emerged now. Given his background in conservation, he'd like to participate in it. As for development, he's remained out of discussions in his workplace relative to the matter. He'd like to be able to participate on the conservation side of the discussion. He'd like to participate in the development review side too, but that may prove to be difficult. He asked the Board for thoughts.

JS, as a consulting ecologist, he's worked for a number of people coming before the board. Depending on the project and his involvement, he's recused himself. On this project, he'll refrain from voting. He feels comfortable speaking to what the BCLF should be used for.

ZR, one of the strengths of the Board is having multiple perspectives and backgrounds.

WF said we're also just an advisory Board.

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DM, Burlington is a small town. The LCBP manages lots of federal grants for local entities. It's not possible to have exclusive silos in such a small community. He's ok with people weighing in on discussion. As for voting, he trusts responsible decisions on recusal will be made.

Andy Simon, does not mean to impugn the good faith of the board or its service to the community. Some of us feel that the development agreement is flawed. This would be a good time for board members with an interest in the project moving forward to recuse themselves from discussion.

Jesse Bridges said the BOF has two recusals relative to this matter due to BC involvement.

MW will recuse himself from discussion and voting on this matter.

Open Space Subcommittee

MM, Nick Warner approached the committee relative to a small expenditure relative to acquisition of land by Derway Island on North Cove Rd. ZR noted the amount is \$3,600.

MM also said the subcommittee briefly discussed Burlington College.

1. Development agreement BC Community Housing

Jesse Bridges, the agreement is at a place where the partners are happy with it, open to discussion. It's up to the City Council now. There are other processes that need to happen. The development plan requires zoning changes that need to go through Planning Commission and City Council. There's also acquisition of the land itself with the conservation fund. It will require action by this body, Parks & Rec Commission, and City Council. The permitting process is also required. The DRB is not party to the development agreement, nor is the Planning Commission. An independent appraisal has been obtained. It came to \$2.95 M for the 12-acre land to be acquired. Most of the land to be conveyed could be developed. There's really nothing new here from what was presented a few months ago. He's optimistic that there will be help in building/stabilizing the path across the property. Although the 12 acres may not be as much as some folks want, it's what we can afford to acquire and what the property owner is willing to part with. We're involved in ongoing discussions about private philanthropy and denotations in partnership with VLT. He's talked to the Parks & Rec Commission about an upfront payment with future installments to cover the remainder. Doing so would allow a balance to remain in the fund for other smaller projects that may arise.

ZR, in terms of the funding mechanics, if the agreement is signed, would we have the details spelled out prior to entering a purchase and sale agreement? Mr. Bridges, yes. WF, the draft agreement is vague. Mr. Bridges, we're looking for input from the board and others before the agreement is finalized.

DM thinks spending over time is a good concept. He'd not want the board to approve an annual expenditure of \$X per year for a given number of years. If the plan is to ask for \$100K per year for the next 5 years, it should be done anew each year. The board should be able to say no if there's something else that comes up in need of funding. Mr. Bridges, if we choose not to approve the funding, then we're backing out of the property acquisition. WF, how long is VLT willing to hold the loan? 5, 6, 10 years? We should set a benchmark goal of what we want for money in the BCLF in any given year.

JS, do we have, or need, a legal opinion as to whether the fund can be obligated for future years? Mr. Bridges, yes, the city attorneys have reviewed it.

Public input:

Charles Simpson, what we pay and what we owe is contingent on the appraisal. The appraisal was paid for by Farrell and is very inaccurate. It uses a 27 acre figure. We need to account for 2 acres for the bike path. It's also based on exclusive use of the beach by development residents. 1/3 of the value is based on the stone house lot. The public open space is doing the work for the development to meet the open space requirement for the "cluster development." The public open space is degraded with a path between

the development and the primary path. The public space will contain all of the stormwater runoff for the private project – either in a pond or in underground vaults.

MM, is the city comfortable with the appraisal? Mr. Bridges, appraisers are legally bound to be objective. The theory that they are subverting the true value of the land because they're paid by Farrell is inconsistent with his understanding of how appraisals work. If you'd like another appraisal that the city pays for, we could do that. He said that the bike path is not included in the 27 acres or 12 acres.

SG reiterated that the project cannot be built under the present zoning. If it were changed to NAC or similar, density per acre would be deleted. FAR would limit density – basically a limitation on building mass relative to the parcel size.

Mr. Bridges noted that no stormwater management is yet designed. Conceptually, the idea is for all stormwater to be handled onsite. SM, noted the contemplation of using the property as an urban wild but also for handling stormwater management. If we're committing to purchase the property, we need to know how it would be used for stormwater management.

WF, we need to be careful to avoid inconsistencies in the agreement.

DM, public rights-of-way commonly receive stormwater runoff. The 12 acres to be conveyed to the city has value to the developer as a site for stormwater management. There is an opportunity to capture that value. Mr. Bridges noted the \$2.9 M appraisal and \$2M purchase price.

Mary Twitchell, remember that the path to the beach will be reconfigured for ADA accessibility which will take up more space.

Ruby Perry, you're being asked whether to contribute BCLF monies to this open space. This is an agreement between the city and the developer. There would be some 770 dwelling units. Look at the terms of this agreement. You're being asked to make a decision even before permit applications are filed.

Martha Molpis, she's concerned with the rapid pace of this development agreement. She'd encourage everyone to take the time they need to make a decision.

Andy Simon, the agreement has some questionable things, such as creation of a "sustainable neighborhood" without any guidelines. Also, notes if cost effective. Does the \$950K difference between the appraisal and purchase price amount to a charitable contribution? He also questions the reduction of the impact fees in exchange for site improvements. It's not totally favorable to the city. He thinks the February 1 deadline needs to be extended.

Mr. Bridges, the city does not determine "charitable giving." That's between Mr. Farrell and tax attorneys and the IRS.

MM, what's next in the process? Mr. Bridges, the BOF has discussed it a couple of times. They'll discuss it again on the 14th. The Council will see it on the 21st. To take action or not will be up to the Council. This is one piece of a multi-step process. The property could contain up to 840 dwelling units under present zoning. 770 are proposed.

ZR, what happens if Mr. Farrell doesn't get through the process? What if the zoning doesn't change, or if he doesn't get permits? Mr. Farrell said there's uncertainty. He could purchase the property back and try a different proposal. There could be open space, but it would be private. The beach could be private.

JS, is there something in place to extend the agreement deadlines? Like push out the February 1 deadline? Mr. Bridges said he'd ask the question of the parties.

Project Review

1. 85 North Avenue

Justin Dextradeur, Dan Goltzman, Erik Hoekstra appeared.

Erik Hoekstra noted that this property is the parking lot at the top of Depot Street. He overviewed the project. He noted the parking easement for COTS. We're working with COTS as the plans are refined; still working on many details.

JS, what about slope stabilization? Mr. Hoekstra, most of what's in the slope is native sand soils and can hold development. Soil retention during construction will be something to consider.

MW, you'll likely have to do piles.

DM, will the housing all be market rate? Mr. Hoekstra, we'll do inclusionary as part of a mix.

SM, what about circulation? Mr. Hoekstra, people informally use the parking lot for circulation to the Avenue. We're looking at improving circulation. Will continue the public sidewalk past the building and, hopefully, out to North Avenue.

DL noted excellent solar access. He suggested building with passive heating in mind. Mr. Hoekstra, considering heat pumps for both heating and cooling. We'll think about the passive solar piece.

SM would like to see all of the stormwater runoff infiltrated into the ground. Mr. Hoekstra said infiltration is being considered.

MW, is engineering the biggest hurdle? Mr. Hoekstra, yes. He noted parking is a big concern with neighbors. Also, how's the traffic going to work? MW, there's significant development at the base of the slope. Infiltration may end up in basements at the bottom of the hill. It's something to consider. SM said test pits are needed. Homework needs to be done prior to settling on a stormwater management design.

MM asked about parking. Mr. Hoekstra said that 1 space per bedroom is proposed. No waiver is anticipated.

2. 453 & 501 Pine Street

Same representatives.

SM recused from this item.

Mr. Hoekstra overviewed the project and noted the adjacent superfund site. 453 is not within the superfund site, but 501 is. Coal tar is the contamination in the superfund site. He noted the project's involvement with BERA (brownfield economic revitalization alliance). This property has been identified as a critical target for brownfield redevelopment.

Justin Dextradeur noted the NAPL, peat, and flood zone lines on the map. ZR asked the level of the flood zone. SG replied 102' above sea level.

Mr. Hoekstra displayed various site iterations and ended with the current proposal – building set close to the street with parking to the side and behind. He noted some degree of infiltration within the parking lot. He also pointed out a level spreader for release of stormwater beyond the surface parking.

Mr. Dextradeur noted some of the geotechnical considerations. We need to avoid compression of peat soils and disturbance of the coal tar.

JS, is it unlikely that infiltrating water would disturb the coal tar? Mr. Dextradeur, that's part of our considerations.

JS asked about 501. Mr. Hoekstra said it may be done with 453 or done separately as just a parking lot. Neighbors are very concerned about parking.

DM sees a ton of parking. He doesn't see how this plan is much better than the prior iterations. Mr. Hoekstra responded that the building has been brought close to the street and parking will be screened. He said they'll be seeking a maximum parking waiver and also a height waiver under the brownfields provision of the CDO. Mr. Dextradeur noted the financial infeasibility of structured parking on this site.

MM, sees mention of permeable pavers.

MW, do you have monitoring wells? Mr. Hoekstra, yes, we have wells in place.

ZR, what happens if the project happens and there's a problem with the superfund site? Who is on the hook? Mr. Hoekstra, we are. There's significant risk. There's no indemnification.

MM asked about wetland buffer impacts. SG noted that the plans show 50' whereas the city has a 100' wide buffer. There will be buffer impacts.

MW, said he understands that there's coal tar in the base of the former coal tar tank. Mr. Dextradeur said he's aware of it. There's no large mass of coal tar. There are some individual globs.

WF, what's the status of the railroad ROW? Mr. Hoekstra said the building is set outside of it.

Mr. Dextradeur noted new multi-use path running in front of the building as part of the Champlain Parkway improvements.

Mr. Hoekstra overviewed the building designs.

Update & Discussion

1. Draft bylaws

Defer to January.

2. 2016 Board meeting schedule

Accept by acclamation.

3. South Forty Solar

SG overviewed the reason for this item. This proposal came before the BCB a few times in 2013 & 2014. The BCB submitted comments to the PSB in April 2014 relative to stormwater and wetlands. The Board has taken no formal action noting whether or not the concerns outlined in their comments to PSB have been addressed or not. The City Council perceives a loose end, and we're looking to tie it up tonight.

Attorney Kim Sturtevant is looking to advise the City Council as to the Board's take on this project.

Frank von Turkovich, the city has intervened. We've incorporated Board and neighbor comments into the project. We've modified the project so that it doesn't extend beyond the eastern boundary of the sewer easement. JS, does pulling in make for a wider buffer to Curtis Ave? Mr. von Turkovich, yes. He continues to work with Strathmore. We're doing the same with people along Sunset Cliff. This project still makes economic sense if we can do it in 2016. As far as the BCB is concerned, he hopes that the Board feels that the project will be beneficial or neutral. He'd like the Board's endorsement.

DM, has the extent of panels been reduced? Mr. von Turkovich, yes. DM, how much smaller? Mr. von Turkovich, about 7% or \$40K per year in revenue.

SM, from the stormwater perspective, the last sentence of Andy Raubvogel's letter relieves him. He's comfortable that the issues have been raised and it's gone through the process. He's got nothing new to raise.

MM, the city is intervening. Are there specific issues, like the sewer easement? Attorney Sturtevant, that is one item. The city is a statutory party. We came in to preserve our rights. There's some lack of clarity as to the Conservation Board's concerns. That's why we're back.

JS, regarding wetlands, there was an opportunity to raise issues and they were fully vetted. A state wetlands permit was granted and not appealed. The city should not now go back and raise concerns with wetlands at the 248 process. He doesn't think it would be fruitful for the city to do so.

MW, noted he's working with Strathmore. The tone of the letter makes it sound like stormwater permits have been obtained. He noted that only the construction permit has been obtained, not an operational stormwater permit. An operational permit would ensure compliance going on down the road. SM is aware of that. The issue has been raised in a number of forums.

Mr. von Turkovich said that the letter is not intended to assert that all stormwater concerns have been resolved.

JS said that the state permit comes with a number of conditions that need to be met. There are safeguards built in. This is out of our hands.

DM, do we need to have a vote or that we're done with our review and comment? DL, probably the latter.

MM, we duly answered the question the City Council sent to us. We did our job and offered the public opportunities to comment that they would not otherwise have had.

MOTION by DM and SECONDED by SM:

We've raised the issues that we see fit and see no reason to raise further issues.

Vote: 7-0-1

Adjournment

The meeting adjourned at 8:10 PM